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DEPARTMENT OF TRANSPORTATION
DOCKETS



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Docket Management Facility (USCG-2001-8773) -14
U.S. Department of Transportation, Room PL-401
400 Seventh Street SW
Washington, DC 20590-0001

RE [USCG-2001-8773] RIN 2115-AG07

Notice of Proposed Rulemaking
Marine Casualties and Investigations; Chemical Testing Following Serious Marine
Incidents

To Whom It May Concern:

We at AEP/MEMCO, agree with and support the long-standing premise that "alcohol testing within two hours after the occurrence of an SMI", is a positive and necessary marine practice. However, we offer the following questions and concerns to the Notice of Proposed Rulemaking: Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents.

Page 3, Paragraph 3: "This rule . . . will not prevent personnel . . . from performing their duties . . .". Each and every crew aboard one of our boats is essential to the effective operation of that vessel. It appears someone (or more than one) will be tested after each SMI. During the interim between testing and full elimination of drug or alcohol use as a contributory factor in the SMI, the individual(s) should not perform duties without further potential employer liability.

We believe further study is warranted to determine potential lost time of the employer.

Page 3, Paragraph 4: "Coast Guard regulations . . . currently require . . . specimens from each individual who is *directly involved* . . .". Specific standards should be established to ensure that *all* necessary tests are administered within the prescribed 2 (or 8) hours. In addition, Page 4, Paragraph 5: calls for a "*sufficient*" number of devices available on board vessels. This can only be determined after criteria has been established for who and how many tests are administered after each SMI.

We recommend consistent definitions of "directly involved" and also "sufficient" in regard to number of devices on board.

Page 5, Paragraph 1: "We would allow . . . to choose any breath- or saliva-alcohol testing device . . .".

We believe compliance with 49 CFT part 40 is necessary to protect employers from exposure to further liability. Further study is needed to establish specific testing guidelines and reasonable limits (.02% VS .04%), acceptable device specifications, storage requirements, and security of specimens.

Robert D. Taylor, AEP/MEMCO
Marine Casualties and Investigations; Chemical Testing Following SMI
Comments and Concerns (page 2)

Page 5, Paragraph 2: "We propose . . . *implementation date of 180 days* . . .". No notation is clear as to the onset of the 180 days.

In respect to these comments, we doubt that any marine company has begun to "procure and learn how to use the required equipment". A reasonable timeline of implementation can be established after all concerns have been addressed.

Page 6, Paragraph 5: "The draft Regulatory Analysis . . . shows *median price* . . .".

We question the accuracy of the per-unit price as well as the 10-year industry estimate of costs (due to the vagueness of specifications, definitions, etc.)

Page 12, Section 4.06-20: ". . . must be taken only by *personnel trained* to operate the alcohol-testing device . . .".

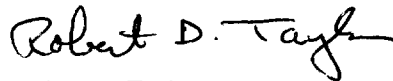
Since we recommend compliance with 49CFR part 40 pertaining to "devices", we also maintain that training requirements should be established and consistent throughout the industry prior to adoption of the Rule. Research indicates that arbitrary training practices lead to avoidable inconsistencies. Security of the post-incident specimen (whether breath, blood, urine) must be maintained and defensible in court whenever licensing and liability issues arise.

Dispatching criteria must be enhanced to provide at least 2 (two) "trained" device operators aboard each vessel at all times.

I further recommend that a **public meeting** be held with all agencies involved to discuss these concerns. At this point it seems reasonable and feasible that a **pilot study be conducted** via a volunteer company for a period of not less than 6 (six) months to determine actual lost time of crew, cost of devices used and stored, dispatching problems, etc.

Thank you for accepting these comments and concerns in a professional manner. Following this teamwork approach will help complete these guidelines so the rule will not burden the brown-water industry beyond acceptability.

Sincerely,



Robert D. Taylor,
AEP/MEMCO River Transportation Division